

NOTICE OF AGENCY RULE-MAKING PROPOSAL

AGENCY: Department of Marine Resources

RULE TITLE OR SUBJECT: Chapter 2.90 Limited-purpose aquaculture (LPA) license,
Chapter 2.05 Definitions

CONCISE SUMMARY: The proposed regulations would establish the guidelines for the issuance of a limited-purpose aquaculture (LPA) license in accordance with 12 MRSA §6072-C, which became effective August 11, 2000. An LPA license would expire at the end of each calendar year and a single individual could obtain up to 4 licenses per year at \$50.00 per license. The issuance of LPA's would be limited to licenses for the cultivation of oysters, quahogs, blue mussels, hen clams or soft shell clams. Applications would require information on the shellfish source, applicable permits for shellfish movement, site plan information showing that the total area of the site does not exceed the statutory 400 square foot limit; gear type(s); certified notification of riparians within 300 feet and a town official's signature.

STATUTORY AUTHORITY: 12 M.R.S.A. §6072-C

PUBLIC HEARINGS:

Monday, April 1, 2002, 6:00 pm, Ellsworth City Hall Upper Level Conference Room, One City Hall Plaza, Ellsworth;

Tuesday, April 2, 2002, 6:00 pm, State Ferry Terminal Conference Room, Rockland;

Wednesday, April 3, 2002, 6:00 pm, Lincoln County Communication Center Meeting Room (lower entrance behind the Courthouse), Route 1, Wiscasset; and

Friday, April 5, 2002, 6:00 pm, The American Legion Cabin, 196 Main Street, Yarmouth;

DEADLINE FOR COMMENTS: **Monday, April 16, 2002**

AGENCY CONTACT PERSON: **Andrew Fisk**

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If you require accommodations due to disability, please contact Breena Whitcomb, at (207) 624-6567.

Proposed regulations:

DEPARTMENT OF MARINE RESOURCES

Chapter 2 - Aquaculture Lease Regulations

2.05(1) Definitions

3. Riparian Owner.

(a) For the purposes of 12 M.R.S.A. §§6072 and 6072-A and 6072-B "Riparian owner" means a shorefront property owner whose property boundaries are within 1000 feet of the proposed lease boundaries.

(b) For the purposes of 12 M.R.S.A. §6072-C “riparian owner” means a shorefront property owner whose property boundaries are within 300 feet of a limited-purpose aquaculture (LPA) license boundary.

7. Discharge.

“Discharge” means, for the purpose of this Chapter only, any ~~is the~~ spilling, leaking, pumping, emptying, pouring, emptying, dumping, disposing or other addition of any pollutant including, but not limited to, the addition of feed, therapeutants or pesticides to waters of the State.

10. LPA license Health Areas.

“ Limited-purpose aquaculture (LPA) license Health Areas ” means the territorial waters described as follows:

(a) Area 1: Downeast and Canada border

Eastern Line - Head of tide on the St. Croix River and International Boundary Line Canada and the U.S. (Maine).

Western Line from West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).

(b) Area 2: West of Quoddy Head to Schoodic Point

Eastern Line - West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).

Western Line – from Schoodic Point due South (True) to the boundary of Maine’s territorial waters.

(c) Area 3: Schoodic Point to the Maine - New Hampshire border

Eastern Line – from Schoodic Point due South (True) to the boundary of Maine’s territorial waters.

Western Line – the Maine and New Hampshire border.

(d) Area 4: Damariscotta River

Head of tide to a line drawn from Emerson Point, at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

(e) Area 5: Casco Bay

Eastern Line - Small Pt. due South Magnetic to the boundary of the territorial waters.

Western Line - A straight line from Active Lt. 2 Lt’s. Cape Elizabeth to C “1” East Hue & Cry (43° 31.9N)(70° 08.8W); then proceed WSW to the boundary of the territorial waters.

2.90 Limited-purpose aquaculture (LPA) license

A. LPA License

It is unlawful for a person to engage in the activities described in Chapter 2.90 and 12 M.R.S.A. §6072-C without a current LPA license issued by the Department of Marine Resources (DMR). A license application may be obtained upon request to the Department of Marine Resources, State House Station 21, Augusta, Maine 04333-0021. A non-refundable application fee must be paid in cash or by certified check in the amount of \$50 per license application. LPA licenses expire at the end of each calendar year. A maximum of four (4) separate licenses may be issued to a single individual during any one calendar year. LPA licenses are non-transferable. There can be no more than four (4) LPA licensed sites within a 1,000-foot proximity of any other existing LPA licensed site or lease granted pursuant to 12 M.R.S.A. §6072 and §6072-A. Up to three (3) unlicensed assistants may be declared as helpers per license.

All applicable statutes and regulations pertaining to the harvest, processing, storage, possession, transport, sale and consumption of shellfish must be complied with. The issuance of an LPA license conveys only those rights specified in Chapter 2.90 and 12 M.R.S.A. §6072-C.

B. Application requirements

(1) Species

Applications must list the common and scientific names of the species to be cultivated under this license in accordance with Chapter 2.90(D).

(2) Source

Applications must identify the source of the shellfish stock or seed to be cultivated or grown and list the current name, address and phone number of the hatchery or nursery source for each species listed under Chapter 2.90(B)(1) above. Applications must also include additional applicable information required pursuant to Chapter 2.90(D) and Chapter 24.

All sources of seed must be from certified hatcheries approved by the DMR Public Health Division pursuant to Chapter 24. Authorized shellfish species must be free from evidence of infectious diseases, pests, parasites or other organisms other than the intended species pursuant to Chapter 24. No seed or shellfish stock may originate from a closed area pursuant to Chapters 95 and 96.

All wild shellfish stock or seed used for cultivation or grow-out must originate from within the same Health Area defined under Chapter 2.05(10) as the LPA location. A permit will be required from the DMR Public Health Division to move shellfish stock or seed within the same Health Area defined under Chapter 2.05 (10) as the LPA site.

Use of wild shellfish stock or seed originating from outside the Health Area of the LPA site will require evidence that the seed or stock is consistent with the species authorized under Chapter 2.90(D) and a permit from the DMR Public Health Division.

(3) Site location

(a) The application must provide one (1) geodetic coordinate in decimal degrees or degrees/minutes/seconds to the hundredths place, the coordinate source (nautical chart number, the edition and its date or software name) and the datum of the coordinate source, for the center of the license location. The lease site must be accurately depicted on a portion of a US Geologic Survey Topographic map or nautical chart.

(b) The application must provide a brief description of the lease site, in particular noting the bottom characteristics and whether there are eelgrass beds present or in close proximity.

(4) Required Signatures

The application form shall require the following signatures:

(a) The individual applicant's signature, including printed name and date, which shall verify that the application does not contain false information, that the applicant will comply with all applicable laws and regulations, and that the applicant agrees to comply with biotoxin monitoring requirements pursuant to Chapter 2.90(E)(3).

(b) Harbormaster or appropriate municipal officer's signature, which shall verify that the officer has received and read a copy of the application and that the license activities will not present an unreasonable impediment to safe navigation, will not present an unreasonable interference with fishing or other uses of the area and will not present an unreasonable interference with riparian ingress and egress.

(c) The absence of any required signature will result in the denial of the application.

(5) Notification of riparian property owners

(a) Riparian owners must be notified by sending, by certified mail, a copy of the LPA application to an address certified by the municipal clerk or Bureau of Revenue Services, Unorganized Division for unorganized territory. The application must be sent to all riparians at the time that it is submitted to the DMR and a copy of the certified return receipt must be included with the application. If the license applicant is the only riparian a second signature for the notification requirement is waived.

(b) Failure to notify riparians and include copies of the certified return receipts will result in the denial of the application.

(6) Site Plans

(a) Plan view

The application must include a plan view, which must be on 8.5" x 11" size paper and show the maximum layout of gear to be deployed drawn to scale, with the scale indicated to verify the 400 square foot limit. Details must include the following located within a 1,000 foot proximity of the site: boundaries, gear, north arrow with True or magnetic clearly indicated, arrows that indicate the tides' primary ebb and flood directions, mean high-water and mean low-water marks, distance to mean high-water and mean low-water marks from the boundaries, any federal or local channels, anchorages, moorings, structures (including other LPA sites), existing lease boundaries adjacent to the 1,000 foot proximity (Chapter 2.90(A)), distances to any DMR water quality closure lines and property lines for all riparian owners within 300 feet.

(b) Gear description:

The applicant shall indicate, which of the following gear will be used, and include an overhead view and cross-sectional elevation view of the gear that includes specifications on all mooring equipment to be used. Aquaculture gear, other than the list of equipment described in this section, may not be used. The descriptions are generalizations of the physical appearance, purpose and uses of each type of gear and are not a substitute for a project specific description with the dimensions of the gear to be used on site. All dimensional information on the mooring equipment contained inside and outside the boundaries must be included pursuant to 12 M.R.S.A. §6072-C(5)(E)(2)(C).

(i) Upweller or "FLUPSY"

An upweller device or "floating upweller system" (FLUPSY) is a self-contained approximately 8 by 20 foot raft similar to a floating dock that sits above the surface of the water roughly 2 feet. The raft generally contains approximately 12 circular "silos" or 30-inch by 20-inch diameter culture tubes that are partially constructed with fine mesh that allows ambient seawater to be pumped or tidally driven through the silos. The flow of seawater provides nutrients to larval shellfish or "spat" or tiny seed contained within the silos. The spat are removed when they are large enough to be transferred to a grow-out site. These devices are most conveniently placed in marinas where power is available to operate a noiseless $\frac{3}{4}$ horsepower axial flow submersible electric pump.

(ii) Shellfish rafts, associated predator nets and spat collectors

A shellfish raft is similar to a floating dock utilized as a working platform from which seed shellfish are suspended or contained by some form of device in which the shellfish are reared to a market size product. The raft may also be used as a work site to seed, sort, clean or harvest product and perform maintenance on the culture devices. A typical blue mussel raft is a floating square frame with beams spaced every foot spanning the raft width from which numerous ropes or dropper lines are suspended but do not touch the seafloor, to inhibit predators climbing up the ropes to eat the mussels. Seed mussels are attached to dropper lines mechanically or by hand with a biodegradable cotton mesh and prevented from slipping off the lines by the placement of 6-inch pegs every foot or so. The vertical profile of an unseeded raft ranges from 2.5 feet above the water surface to roughly a 1-foot elevation when seed mussels are attached. A shellfish raft can be a solid platform from which shellfish tray racks and or mesh bags containing shellfish are suspended beneath the raft in the water. The suspended devices would be accessed through openings similar to a trap door in the surface of the float. Predator nets are commonly suspended with weights for adequate tension and have large diagonal mesh openings of at least four (4) inches. Dropper lines are used to collect mussel spat that may be collected from the water column when they attach to the lines. For purposes of this regulation the use of specialized spat collection devices or gillnet material placed in onion bags are not included.

(iii) Shellfish tray racks and over wintering cages

Shellfish tray racks have a cubic dimension similar to a box, cage or column-like unit that is made of coated wire mesh or rigid plastic on a wood, plastic or metal frame. A

rack will generally contain interior shelves that can hold 1-2 mesh bags per shelf and is used to contain seed shellfish. The mesh material allows water to pass through providing nutrient to the shellfish.

(iv) Soft bags, semi rigid bags and floating trays

Bags and tray devices are generally constructed of a plastic or similar material of various mesh sizes that are changed throughout the growing season to accommodate greater water flow as the shellfish increase in size. The bags and trays vary in size. Bags have general dimensions of 16-22-inches wide by 28-40-inches long by 2-3-inches in height. Bags are most often connected end to end, floated on the surface using pipe insulation placed inside the bags on the sides and moored at each end of length or string of bags. Trays may refer to the shelves contained in the shellfish tray racks described under Chapter 2.90(B)(5)(b)(iii). Tray may refer to a rigid plastic or wire mesh container generally 3 feet wide by 4 feet long by 6-inches high that is deployed between parallel lines and may be floated on the surface or submerged.

(v) Lantern nets

A lantern net typically is a five or ten tier set of circular nets of approximately 18-inch diameter and 6-inch depth suspended from a central line. Mesh sizes typically vary from 1/8-inch mesh to 1.5-inch mesh size.

(vi) Fencing and brushing

Fencing and brushing are most commonly used by municipal shellfish programs in the intertidal zone for the collection of soft shell clam spat in their management plans in conjunction with intertidal anti-predator netting. Whereas intertidal activities are not authorized pursuant to 12 M.R.S.A. §6072-C(2) above the mean low water mark these devices are not authorized for use under Chapter 2.90.

(vii) Moorings

Mooring devices vary in terms of materials, tension ratings and range of sizes available and are generally site specific. For the purposes of Chapter 2.90, they include the anchor type and all tackle securing fixed or floating gear.

C. Site Limitations

(1) Maximum size

Gear, excluding mooring equipment, may not cover more than 400 square feet in any contiguous configuration.

(2) Territorial waters

LPA license locations must be located within Maine's territorial waters as defined in 12 M.R.S.A. §6001(48-B) below the mean low water mark pursuant to 12 M.R.S.A. 6072-C(2) and below the extreme low water mark in towns that have a DMR approved Municipal Shellfish Program (MSP) that stipulates its jurisdiction extends to extreme low water.

(3) DMR Water Quality Program

LPA licensed site locations may not be located:

(a) in areas other than those defined as approved, conditionally approved, restricted or conditionally restricted in the open status pursuant to 12 M.R.S.A. §6172 and DMR regulations Chapter 95;or

(b) within 300 feet of any closure boundary line.

(c) Upweller devices only, as defined in Chapter 2.90(B), may be located within areas classified in the restricted or conditionally restricted status, pursuant to DMR regulations Chapter 22, on a LPA licensed site. All movement of cultured shellfish from a license location that is in either restricted or conditionally restricted status must be conducted pursuant to DMR regulations Chapter 22. This exception does not apply if upweller devices are used in combination with other authorized equipment.

(4) Department of Inland Fisheries and Wildlife (IF&W) Essential Habitats

LPA license locations may not be located within the areas regulated pursuant to 12 M.R.S.A. §§7753, 7754(2)(3) and 7755-A(1)(2)(3) and pursuant to IF&W regulation 09-137 CMR Chapter 8, Endangered Species. Maps showing the boundaries of essential habitat are available from the IF&W regional headquarters, municipal offices, the Land Use Regulation Commission for unorganized territories and DEP regional offices.

(5) United States Army Corp of Engineers (ACOE) Authorization

Upon receipt of an LPA license application, the Department shall forward a copy of the application to the ACOE for their review and approval. A permit from ACOE is required prior to the placement or use of any gear proposed in a LPA application. No structures may be located within the boundaries of a Federal Navigation Project. The ACOE may require additional project specific information of the applicant.

D. Authorized Shellfish Species

An LPA license may be issued only for the cultivation of the following shellfish species: Blue Mussel (*Mytilus edulis*), Hard Clam / quahog (*Mercenaria mercenaria*), Hen Clam (*Spisula solidissima*), American or Eastern oyster (*Crassostrea virginica*), European Oysters (*Ostrea edulis*) and the Soft shelled clam (*Mya arenaria*).

All shellfish stock or seed used for cultivation or grow-out must originate from within the same Health Area defined under Chapter 2.05(10) as the LPA site. Use of shellfish stock or seed originating from outside the Health Area of the LPA site will require a permit from the DMR Public Health Division and evidence that the seed or stock is consistent with the species authorized under Chapter 2.90(D) above. Authorized shellfish species must be free from evidence of diseases pursuant to Chapter 24.

E. Activity limitations & requirements

(1) The licensed activity must not generate a discharge into territorial waters pursuant to 12 M.R.S.A. §6072-C(2)(A), 38 M.R.S.A. §413 and DMR regulations Chapter 2.05(7).

(2) An LPA license applicant may declare assistants to be named on any LPA license. Declared assistant(s) named on any LPA license must in possession of a copy of the LPA license whenever engaged in any activity at that licensed site. It shall be lawful for individuals other than the license-holder's assistants to utilize, raise, lift, transfer or possess any approved aquaculture gear if a hurricane warning issued by the National Weather Service is in effect for any coastal waters of the State.

(3) Marine Biotoxins

(a) Closed Polluted Area compliance

Harvest of product shall be prohibited in site areas which are closed due to marine biotoxins pursuant to Chapter 96.

(b) Diarrhetic Shellfish Poisoning (DSP)

When local sampling indicates DSP toxin is present in the area, or phytoplankton which may cause DSP toxin are found in the area, then analysis for DSP will be required prior to DMR approval for the harvest or sale of product from the LPA site. A minimum of twelve (12) shellfish must be submitted by the license holder to DMR for this analysis in accordance with Chapter 2.90(E)(v) below.

(c) Domoic Acid (ASP)

When local sampling indicates ASP toxin is present in the area, or phytoplankton which may cause ASP toxin are found in the area, then analysis for ASP will be required prior to DMR approval for the harvest or sale of product from the LPA site. A minimum of twelve (12) shellfish must be submitted by the license holder to DMR for this analysis in accordance with Chapter 2.90(E)(v) below. Prior to approving the harvest or sale of shellfish from any LPA site, which has submitted shellfish samples to DMR in accordance with Chapter 2.90 (E) (ii) above, the DMR may, in its sole discretion, send samples to an accredited analytical laboratory for analysis for Domoic Acid (ASP) toxin.

(d) Requirements and procedures

(i) Monitoring

The cost of monitoring for marine biotoxins, when required under the provisions of this section, shall be paid for by the license-holder. When monitoring is required, it must be done prior to the harvest of shellfish from the site for human consumption, or for any other commercial or non-commercial use. The license-holder must submit a minimum of twelve (12) shellfish for analysis at a DMR Public Health Division Biotoxin Laboratory by contacting the Boothbay Harbor facility at (207) 633-9555 or the Lamoine facility at (207) 667-2418.

Sample results will be reported to the license-holder on a marine biotoxin analysis certificate issued by the DMR Public Health Division.

(4) Record keeping

Complete, legible and accurate records of transport, harvest, and monitoring shall be maintained and available for inspection for at least two (2) years by the license-holder and must include the:

LPA license number, site location, date and data related to marine biotoxin analyses;

source of shellfish, including seed if the seed is from growing areas, which are not in the approved classification;

dates of transplanting and harvest; and

detailed records of sales.

Records of the origin and health status of all seed or shellfish stocks reared on the site must also be maintained.

Records must be made available to DMR for inspection.

(5) Shellfish harvested from the site must be kept in containers that prevent commingling of different harvest lots.

(6) Only drugs approved by the US Food and Drug Administration (FDA) may be used for shellfish treatment.

F. Maintenance Standards

All aquaculture gear must be maintained and kept in a fully operational condition. Each LPA site must be clearly marked at each corner, or at the center, as is appropriate to the gear type deployed, with a buoy or buoys at least 12 inches in diameter clearly marked with reflective tape. The license-holder's name, homeport and LPA license number must be clearly displayed on every marking buoy.